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ABSTRACT

This paper provides an analysis by three black leaders of how the law, the nation, and the church agencies have responded to liberation issues in recent years. Victor M. Goode analyzes the role and status of blacks under the law from the Scott v. Sandford decision in 1857 through the dismantling of the formal structures of slavery and the modern era of civil rights legislation to the Allan Bakke decision, reverse discrimination and the decline in affirmative action. Charles E. Cobb argues that, because of the social and political systems in the nation, minority interests are of little concern and minorities are prevented from mobilizing to combat the prevailing storm of racism. M. William Howard discusses the current degree of attention given to civil rights by the church. He takes into account events that changed the liberal idealism of the 1960s to the cynicism of the 1970s. (EB)

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New Winds of Racism

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(Ed. Note: It seems much longer than only 15 years ago that the massive March on Washington took place and the Reverend Martin Luther King, Jr. helped stir the conscience of a majority with his dream. Laws regarding minorities have been changed since then, but so also has the spirit of the times. The Supreme Court's long awaited decision this summer on the Bakke case—outlawing quotas while still giving a nod to affirmative action—is another benchmark in the long and tortuous relationship between the American majority and minorities. This issue of GRAPEVINE, commissioned by JSAC's Human and Economic Development Task Force, provides an analysis by three Black leaders of how law, nation and church agencies have responded to liberation issues in recent years.

Mr. Victor M. Goode is executive director of the National Conference of Black Lawyers and we are particularly grateful for the thorough study on the historic interaction between law and social policy he prepared for this issue. Dr. Charles E. Cobb, executive director for the Commission for Racial Justice, United Church of Christ, is one of the most prominent and persistent of all the churches' executives who work primarily in the area of racial justice. The Reverend M. William Howard is executive director of the Reformed Church's Black Council, moderator of the World Council of Churches' Programme to Combat Racism and nominee for President of the National Council of Churches.)

In Law

by Victor M. Goode

The constant interaction between law and policy is an often confusing and unsettling dynamic. Traditionally, courts look to legislation to determine public policy on a given question. However, as nearly every political controversy in this country eventually finds its way into the courts, it has become increasingly difficult to determine where the sentiment of public policy lies and even more difficult to then balance it against legal considerations. The result, as some critics charge, is that the courts then go about making their own policy and imposing it on the electorate.

This has been one of the chief criticisms of the legacy of the Warren Court and its series of civil rights decisions that provided much of the national impetus and judicial foundation for the various programs now generically known as Affirmative Action. The present controversy, legal and political, around the *Bakke* case indicates that we may be witnessing the advent, rise and fall of affirmative action as law and policy all within the span of the last fifteen years. In order to gain some insight into this phenomenon that we are living we need to take a brief look at the historical interaction between law and policy and the path that we have travelled from civil rights to reverse discrimination.

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Role and Status of Blacks a Century Ago

There is no more sweeping an analysis of the role and status of Blacks under the law than the words of Justice Tanney in *Scott v. Sandford* decided in 1857 during the controversy over the Missouri Compromise:

> They had been for more than a century before regarded inferior beings, and altogether unfit to associate with the White race, either in social or political relations; and so far inferior that they had no rights which the White man was bound to respect; and that the Negro must justly and lawfully be reduced to slavery for his benefit.[1]

Slavery had been the practice of this country since its inception and numerous laws, political practices and beliefs about Blacks had been commonplace in the North and South and were an integral part of the political and social fabric of American culture.

The Scott case stands infamous because the Supreme Court went well beyond the legal issues raised and attempted to settle the policy questions of the "status of the Negro" (sic) once and for all.

What resulted was a meticulously developed commentary on the depth of racism in this country. The law notwithstanding, the Court in addressing the real policy issue of the social and economic status of the African-American declared him to be neither citizen nor person under the law.

Yet the social reality of the mid-19th century dictated that the African was very much a person in the function of society. So the courts were faced with the contradiction between the law, which addressed the African as void of all rights; social policy, which demanded that status quo be legitimized and sanctioned by the courts; and social reality, which was rapidly moving the African into an indispensible role in the American economy.

Abolition and Isolation

In 1863 the formal structure of slavery began to be dismantled with the issuing of the Emancipation Proclamation, an executive order freeing those slaves that were in territories of the Confederacy which were occupied by union troops.[2] Following the end of the war in 1865 came the passage of the 13th Amendment which dismantled the form and structure of slavery and the policy of abolition became law. However, underlying this policy was a deeply rooted system of race exploitation that remained essentially intact and would continue to contradict the law as embodied in the 13th Amendment.

Following this legal dismantling of slavery came the passage of the 14th Amendment in 1868 and the 15th Amendment in 1870. These two amendments declared the newly freed slaves to be citizens, vested with all the rights and privileges of citizenship and guaranteed "the equal protection of the law" [3] and further provided that these new laws would constitute a restructure of the political order since no . . . "state could deprive any person of life, liberty or property without due process of law." [4]

These three amendments taken together, along with the Civil Rights Acts of 1866 and 1875, were supposed to overturn the Supreme Court holding in *Scott v. Sanford*. Yet, the key to understanding these amendments and laws lies in a careful reexamination of the Scott case.

Justice Tanney's opinion in that case went to great lengths to affirm the African slave's status as property and inferior being, in fact and under the law. Tanney's words reiterated the public policy of the day. His opinion established that Blacks were property and that the founding fathers embodied within the Constitution the already established relationship between white men, private property, Blacks and the function of government. As Governor Morris of New Jersey stated in the Constitutional Convention debates, "life and liberty were generally said to be more valuable than property, but an accurate view of the matter would nevertheless prove that property was the main object of society." [5]

The Tanney decision established Blacks as property and established their relationship to the protected system of private property as well. Slaves served the economic system as a tool, an objective part of the system, not as dynamic human beings vested with rights and privileges. Since the owner of any property could use it in any way he saw fit, slavery was judicially sanctioned as the fully legitimate economic, political and social policy of the land. This exploitation was as complete and total as one could imagine and the Court emphasized the process of this policy by writing at length on the historical, social and economic degradation of those "inferior beings." [6]

Even though the 13th, 14th, and 15th Amendments attempted to place the African into the American political system and make him equal under the law, the legacy of slavery and its total exploitation and racism was rooted in the very origin and evolution of the American political system and constitutional process and could not be easily uprooted where policy and practice ran counter to the newly enacted law.

Slavery and racism formed the basis of the material isolation of the Afro-American in this society. Although these reconstruction amendments changed forever the whole dynamic of Black-White interaction in the political system, they did not change the basis of that system.[7] Despite the myth of the American melting pot, we as a nation have never been "a system of social variables tending toward harmony and concensus, but a complex whole, composed of different groups in competition with each other." [8]

Policy Pressures Law

The law changed dramatically long before there were real changes in public policy toward Blacks. The Negro had arrived but was still regarded as an inferior being. Indeed, passage of the 13th, 14th and 15th Amendments established such a gap between ideals and practice that even today, although we have closed the gap considerably we have failed to bridge it.

It did not take long for the courts to demonstrate the contradiction between a political system based on racism and exploitation, and political structures such as courts, laws and administrative bodies ostensibly designed to give substance to the expanding theory of equality as enunciated by these new constitutional amendments. Beginning with *Hall v. DeCuir*, 95 U.S. 485, decided in 1877, the Civil Rights Acts of 1866 and 1875 were slowly eroded away. Mrs. DeCuir, a Black woman, attempted to ride in the White section of a river boat. The court held that the State of Louisiana could segregate its carriers since Congress did not intend to regulate interestate commerce with the Civil Rights Acts.[9]

In a later series of cases called the *Civil Rights Cases*, 109 U.S. 3 (1883) the Supreme Court voided the Civil Rights Acts of 1866 which prohibited discrimination in places of public accommodations. The Court declared that equal protection under the law did not permit Congress to require White property owners to open their commerce to Blacks. In other words, the 14th Amendment applied to institutions not to white citizens.[10]

The degeneration of the legal superstructure created by the wartime amendments culminated in the case of *Plessy v. Ferguson*, 163 U.S. 537 (1896). The case brought by Plessy, a Black man, challenged the validity of a state law requiring separate seating facilities for Blacks and Whites on railcars. The Court upheld the law and the ominous separate but equal doctrine was given judicial sanction. The common trend that runs through all these cases is that these judicial challenges emerged from conflicts in the market place where Blacks were challenging the traditional policy of race privilege. The use of rail and river carriers, hotels and other facilities was a necessary part of efficient economic and commercial activity. History dictated that the exploited position of Blacks gave Whites the automatic privilege to deny Blacks access to resources that were ostensibly of a quasi-public nature. This was a color line privilege whose

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relationship to the material isolation of Blacks is clear. It extended to all Whites, even those who themselves were victims of various forms of exploitation. It was subtly included in the construction of the Constitution and had a historical foundation in the political system, not simply in the judicial superstructure which created the fiction that separate facilities for Blacks and Whites could be equal in the balancing of rights, interests and privileges.

The failure of logic in the courts and the larger community was in their inability to grasp the difference between structural change, brought about through the law, and systemic change, which must be mutually reinforced by law and social policy. Reluctance to implement this lesson even if it had been grasped set the direction for the 60 years of civil rights agitation and litigation which was to follow and finally arrive in the landmark case of *Brown v. The Board of Education*, 347 U.S. 483, 74 S. CT. 686, 98 L.Ed. 873 (1954).

Modern Era of Civil Rights Litigation

In 1953 Charles H. Houston assumed the leadership of the NAACP Legal Defense Fund and the modern era of civil rights litigation was begun. From this small group of lawyers, most of whom were trained at the all-Black Howard Law School, the strategy for the desegregation of public facilities was carefully nurtured and carried out. Earlier they had attacked racial discrimination in war-time industries, aided by the demand for Black labor caused by the war crisis. Later cases involved attacking the separate but equal doctrine in Oklahoma and Texas state law schools which were restricted to Whites and provided no facilities whatsoever for Blacks. The court slowly began to give judicial notice to the fact that the racial allocation of goods and services in society was in fact based on color privilege and the equality of institutions created under the system was a mere fiction. The stage was set for the historic decision in *Brown v. Board of Education*.[11]

Brown was carefully chosen as a test case because the facts revealed that objectively, the separate Black and White school systems of Topeka, Kansas were equal. Roughly the same amounts of funds were expended per pupil, teachers were of a similar caliber and facilities were comparable. The real question raised in *Brown* was the legal validity of segregation.[12] In responding to the issues in *Brown* the Court gave tacit recognition to the institutional and systematic nature of racism, and fashioned a remedy that gave hope to the legal strategists, but demonstrated that the development of public policy consistant with the charge in the *Brown* case was still years away because neither the Court nor the public understood the real social issues underlying the case.

The Court reasoned that "to separate them (Blacks) from others of similar age and qualifications solely because of their race generated a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way never to be undone." [13]

What the Court failed to understand, in a classical example of liberal paternalism, was that the hearts and minds of Blacks were more affected by being exploited as an underclass of society than by any lack of institutionally fostered contact with the White race. It is evident that racism has its psychological impact, but what creates inferiority is oppression, not mere perception!

Despite this tragic flaw, the *Brown* case did form the judicial cornerstone for future agitation and litigation for Blacks' access to public resources. This great struggle was constantly trying to close the persistent gap between a theory of equality under the law and the reality of racial oppression. It brought the 14th Amendment and its principle of equal protection under the law into use as the main legal tool for future cases involving the schools and numerous public facilities from which Blacks were excluded.[14]

But change came very slowly under *Brown*. The courts knew they were requiring the dismantling of the deeply rooted southern system of Jim Crow segregation and were well aware that there would be violent resistance. In an attempt not to antagonize the southerners and at the same time maintain the integrity of the law, the court ordered the implementation of school desegregation with all "due and deliberate speed." [15] This speedy process was met by such massive resistance that the Court refrained from even hearing another case under the *Brown* rule until 1964.[16] By then the civil rights movement was in full force and the issue of American racism was being dramatized to the American consciousness through almost daily demonstrations and marches.

The civil rights movement which began to agitate for a new national policy was given a new sudden twist by massive rioting in New York, Chicago and Watts and nearly $40 million in property damage that resulted. Despite emerging militancy and the rhetoric of Black power, the NAACP and its middle class allies both White and Black continued to control almost all litigation in the civil rights field and played the decisive roll in the lobbying efforts which resulted in the Civil Rights Acts of 1964 and 1965.

The *Brown* case attempted to develop a structural remedy to racism in education by forcing a reallocation of educational resources that had been allocated in a discriminatory fashion. It failed for two important reasons. First, the prevailing social philosophy of the mid 1950's failed to see the Afro-American as an exploited group confined by a pervasive system of race/class controls of which the Jim Crow system of segregation was but one of many social devices. It is not surprising that the Court failed to accurately perceive the complex social problem it was confronted with. Later courts, legislators and shapers of public policy, when confronted with similar issues, also exhibited very little insight toward meaningful solutions.

The Court hearing the *Brown* case had a unique opportunity.

Even though the prevailing social policy failed to offer the Court the proper countervailing rationale and direction for a more incisive attack against racism, the resulting opinion did provide a vehicle to move in that direction. Rather than utilizing the due process and equal protection arguments of the 14th Amendment as the foundation for its opinion, the Court could have used the broad mandate of the 13th Amendment.

Brown Fails to End Segregation

This constitutional mandate to remove all badges and incidents of servitude, if forcefully applied in the *Brown* case, could have fundamentally reconciled both the social policy of the day, which was beginning to develop a tone opposed to racial discrimination, and the law, which set out from *Brown* to reflect that policy by setting judicial standards for non-discrimination.[17] The Court could have cut through the unclear language of non-discrimination and exposed the *Brown* phenomena as an example of the pervasive system of racial exploitation of which segregated education was simply one fundamental component. Had there been such language and reasoning in the decision most of it would have been dicta and not specifically applicable to the resolution of the case, but it would have marked a fundamental shift in the legal thinking and public policy that might have dramatically affected the civil rights movement and civil rights law that followed.

In retrospect we all can become the Learned Hand of Justice, but in 1954, given the political and social philosophy of the day, the Court may have done as much as it was capable of doing. We did well to achieve firm, judicial recognition of the 14th Amendment as a Constitutional bar to the more onerous social structures of a racist political system.

Indeed, the second failure of *Brown* lies not with the Court but in the structure of the American political system. Although with *Brown* the 14th Amendment became the cornerstone of both the law and public policy on civil rights, it was a foundation limited from its inception. The equal protection clause can be understood as applying the theory of equality to the distribution of benefits and burdens in the public sector.[18] Most civil rights litigation since *Brown* has attempted to develop equations to determine the formulation of equality in a variety of public sector activities such as education, transportation, housing, voting, etc. Unfortunately, these judicial equations, developed through the years by the Warren Court, contradicted a political and economic system which embraced, and even required, wide degrees of inequality in the private sector. We must always remember that the American Constitution provides a political structure that was designed to protect private property and private sector activity.[19]

It should not be totally surprising that we may have reached the limits of the 14th Amendment because of the requirements it has imposed on that most protected private sector of society. The equal protection clause, once the foremost weapon in the Constitutional arsenal against racial discrimination, has been turned around and made the major tool of those who claim that affirmative action programs now constitute unlawful reverse discrimination.

Legal Remediation versus Public Non-Discrimination

The constantly changing dynamic between law and public policy is one in which the distance between the two becomes vitally important to the functions of both. As the 14th Amendment and the Civil Rights Acts of 1964 and 1965 began to be applied throughout the institutional sectors of society, the theory of equal access and the reality of unequal opportunity widened. As legal barriers to opportunities by minorities fell, it became clear that for the opportunities to actually be achieved another step was necessary. The new vehicle became known as affirmative action and its requirements and operations were once again prescribed by law, this time from the administrative sector. The Department of Health, Education and Welfare developed regulations under Title VI and other titles to the 1964 Civil Rights Act which virtually touched the entire national educational system. The Equal Employment Opportunities Commission was not far behind in developing its own rules regulating employment desegregation, both public and private. These activities characterized the dramatic legal shift from non-discrimination to affirmative action.[20] But this rapid development in law, and the changes that it brought about, had outstripped a public policy that was at best only beginning to accept the notion of non-discrimination.

The failure of public policy to close this gap is in part simply a function of the complex nature of institutional racism. When the civil rights, liberal and labor coalition lobbied for passage of the Civil Rights Act of 1964, the national leadership was only beginning to talk about integration and non-discrimination. The Black man was still a Negro, discrimination was basically a southern problem and the only leader talking about eradicating the system of racism was Malcom X and other Black radicals. Unfortunately, the nation's concept of race in American society has not moved fundamentally from its mid-1960's notions. In the last decade most of the judicial opinions based on an interpretation of the origins of the 14th Amendment and the more recent civil rights acts accepted and incorporated the concept of remediation.[21] On the other hand, prevailing public policy has only accepted the concept of non-discrimination. The former speaks to a retroactive analysis and remedy that covers the past, present and future. The latter only allows for an analysis of immediate circumstances and the formation of prospective remedies. As the public's hue and cry against remedial judicial solutions increased, it began to have a telling effect on judicial thinking on civil rights remedies. Since 1972 the expansive constitutional opinions of the Warren Court have been replaced by the more conservative thinking of the Burger Court.[22] Public policy has failed to catch up with the further-reaching aspiration of the law. The result: judicial recognition of affirmative action has been steadily reduced to conform to a theory of constitutional neutrality as expounded by the California Supreme Court decision in the *Bakke* case.

human potential
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The Bakke Case

The *Bakke* case certainly illustrates the dominant role that this now conservative public policy is playing in fashioning a solution to the current controversy around so called reverse discrimination. Unlike most major civil rights decisions of the past decade which were carefully developed for Supreme Court review, the Bakke case was thrust before the Court with serious discrepancies between the facts which the California court took judicial notice of and the actual operation of the program.

It is therefore critically important to see the Supreme Courts' decision in the Bakke case as part of the interplay between law and social policy. A close examination of the decision leads one to place it more within the framework of a statement of political policy than a clear enunciation of law and legal principle. After nearly two-and-one-half years of litigation, this most celebrated civil rights case since Brown v. Board of Education produced a conflicting array of opinions that is now being sold to the American public as a decision that is fair and equitable to all. Nothing could be further from the truth.

There were four justices—Burger, Stevens, Rhinquest and Stewart—who looked at Title VI of the 1965 Civil Rights Act and concluded that under its language no person should be denied equal access to educational opportunity and therefore that Mr. Bakke should prevail. They offered us very little discussion of the particular facets of the Davis program. In short, they offered no clear reasoning or guidelines that would preserve the principle of affirmative action and indicate what type of programs clearly meet the legal test as they see it under Title VI. These four justices do not even reach the constitutional questions raised by the case. Instead they apply the rule which eliminates the necessity for reaching constitutional issues when controversies can be settled on state or federal statutes not inconsistant with constitutional principle.

These four justices are joined by Justice William Powell to form a five to four majority on the issue of whether or not Allan Bakke was discriminated against and, therefore, entitled to a Court order concerning his admission. Powell went well beyond his four colleagues in concurring that Bakke was a victim of discrimination. He concurred in feeling that the Davis program failed to satisfy the provisions of Title VI, but he went on to say that it also failed under the Fourteenth Amendment.

Powell's lengthy and meandering opinion offered no more clarity on the constitutional issue than his colleagues offered on the question of Title VI. There are people within the civil rights community and in the news media who have gone to great length to applaud the fact that Powell stated that race could be used as one factor among several in an admissions process. The point is hardly worth any acclaim since it is merely a restatement of existing case law. Justice Powell offered neither an extension of, nor further clarity to that well established principle that race can be used as a factor in an affirmative action program.

Yet we are told by many that this point alone is cause to consider the Bakke case a "victory" for civil rights. Signals of change in the course of history are often subtle and their effects take years to manifest. We will not have to wait so long to witness the effects of the *Bakke* decision.

At a time when the nation was looking to the Court for clarity and guidance on the future of affirmative action we get instead confusion and disagreement. At a time when the civil rights community looked for an extension of existing case law clearly enunciating the judicial requirements for affirmative action, the response of the Bakke Court was to bring judicial notice to the social concept of reverse discrimination and offer an intellectual rationale for institutional racism.

Their arguments, though well stated, were lost in the shifting dynamic of a public policy that demanded that the Court anchor the process of retrenchment and offer reason to the condition of institutional racism in this society. By the time this article is published, Black enrollment in medical schools will be down by 67%. Black applications to law schools will be down from the previous year and Black enrollment in other graduate disciplines will continue a trend of decline.

The many questions that were left unanswered by the *Bakke* decision will lead to considerable litigation as angry White educational institutions and national minorities attempt to chart their future in the unsettled waters of affirmative action. One clear point did emerge from this decision: until there are major changes in the way in which this nation views the institution of racism, there will be little, if any, opportunity for this Court or any Court to play a positive role in stopping the new policy and implementing its goals.

The failure of the Bakke Court is a failure more of history and social policy than of jurisprudence. Let us hope that the more immediate future can resurrect from this decision seeds for a new policy for the future.

In The Nation

by Charles E. Cobb

There is a *new* wind of racism that is increasing in velocity on the national scene. Like its predecessor it is buffeting every institution that affects living. Unlike other times when the experiencers engaged in dialogue, today only a deceptive monologue is the protective survival strategy and style. Whites are talking to Whites and Blacks are talking to Blacks. Those most buffeted are unequipped to survive or significantly battle the raging gale. Some who belong to this group have been offered, accepted and provided resources from those with resources (system) which enables them to ride out the storm, while the masses continue being ignored, exploited and/or destroyed. The

word *new* is italicized in the description of this wind because in truth it is not new at all, but rather the same old wind of another time, which from the beginning was calculated to deny resources and services: resources with which to battle the storms of poverty and the continuing recession; i.e. adequate housing, health care, education and those things that diminish and demean personhood and citizenship.

Unquestionably the aspiration of Blacks and other minorities are no longer a major concern of the nation's decision makers and power brokers. Minority interests are of little importance, which is reminiscent of another day. Joel Dreyfuss, writing for the January 1978 issue of BLACK ENTERPRISE, makes the following observation: "The new racism has changed its form but not its substance and is still old and deadly." Vernon Jordan, executive director of the National Urban League, in his address to its 1978 meeting called the new racism "the new negativism." How right these men are as they assess the national scene! How clearly do they see that the new monster Blacks and others battle today is the same old monster of yesterday—racism. The difference today is that it is described by other words: quotas, ethnics, reverse discrimination, lower standards, crime in the streets, law and order and many other phrases whose very undergirding is racism.

What makes the times so ominous is that Blacks and other minorities stand virtually alone in the ensuing struggle. Former allies and friends (labor, liberals, intellectuals, Jews) of another time have deserted the cause of justice, equality and human and civil rights for minorities, and have joined forces with the abiding foes of freedom and justice. They provide the underpinnings for the resurgence of old feelings and the strategy for thwarting and subverting the full entrance of Blacks and other minorities into the mainstream of American life. Almost every national publication of any prominence features articles by one or more of these "friends" of yesterday justifying national retrenchment of justice, equal opportunity, affirmative action, human and civil rights for all. Their musings can be heard on radio and television in increasing abundance and regularity.

Dreyfuss cites other evidences in his article: a recent survey by Lou Harris shows "a majority of Blacks feel they are discriminated against while the majority of Whites feel Blacks are not discriminated against." A report by Seymour Martin Lipset of Stanford University states: "Whites do not believe discrimination is the principal cause of Blacks' inequality . . . but see Black problems as stemming essentially from the moral failing of individuals." This, Dreyfuss perceives, is living proof of the continuing life and vigor of White stereotypes about Blacks. Given this perspective, plus an innate or acquired physical fear of Blacks, Whites address their concern in the economic and political arena. They are certain that, as the economic crunch continues and expands, they are the endangered species. The White scholar, politician, white and blue collar workers, poet and peasant join forces to resist and subvert the legitimate claims of Blacks and others. All minorities have become expendable—this is why the percentage of significant Black owned businesses is so pitifully small, this is why Black housing, health care, education and a myriad of other rights and services continue to erode.

Perhaps the greater tragedy in this time of peace and the expanding gale is the non-ability, because of the system, of Blacks and other minorities to mobilize themselves to combat the storm. It is unbelievable that 30 to 50 million organized folk could fail to protect themselves from forces that would destroy them. The gross national income of these exploited people exceeds $100 billion a year. However their resources end up being controlled by those who dominate and exploit. Throughout the nation there are many electoral districts where an organized minority constituency could determine who the political decision-makers will be. This represents potential power. But in spite of the system it is assured that the gathered storm of racism, that for so long has washed out, swallowed and destroyed one of God's great treasures, will continue and be a loss to the nation and world.

For now, what can be said agrees with the sage of another day, "Plus Ca Change, Plus C'est La Meme Chose"-the more things change, the more they remain the same.

In The Church

by M. William Howard

How the American churches in general have dealt with civil rights is such a mixed bag that it defies characterization. I will confine my remarks to observations made in the so-called "mainline" predominantly White denominations since 1972 when I came to my present responsibility.

Uncertainty was afloat in the national church agencies. Change, and it accompanying anxiety, were in the wind. In addition to the "Race" desks that had been established in the previous decade, some denominations were beginning to diversify by electing members of racial minorities to prominent staff positions. This we certainly regarded as a positive development, but it also meant that a number of assumptions had to be reevaluated—even some objectives. People began to speak about this being "the 70s not the 60s." "Rhetoric" became a bad word. We talked more about "working within the structures" or about "a quiet, more disciplined participation in change." In a way it was the period's own brand of rhetoric and it reflected ambivalence about the future.

The 1970s were also a time of financial retrenchment for national church agencies. Regarded by many commentators as a "rebellion" on the part of local members against so-called "social ministries," I believe it can also be attributed to the general anti-bigness, anti-bureaucratic sentiment that was emerging.

At a more psychological and spiritual level, people did a kind of flip-flop from liberal idealism in the 1960s to an all-pervasive cynicism in the 1970s. The utter disregard by national political figures for the traditional ideal of the populace and the brute force they employed to make their point in such places as Jackson State and Kent State gave a kind of shock to whatever innocence there was left. Yet in the place of innocence came not wisdom, but panic, confusion and cynicism. The assassinations of Martin Luther King Jr. and Bobby Kennedy, and Vietnam really "broke the camel's back." Untold numbers of people turned inward; they've joined the movement of "me, myself and I."

During this period the organized Black caucuses in predominantly White churches continued to meet. Most are celebrating their 10th anniversaries roughly around this time. Only a few of them have the same level of public activity that they had when they were formed. Part of the reason for this is related to the varied factors that provoked these groups to organize. Some organized to challenge injustice they felt existed in their internal

structures; some to address themselves to injustices in society and to press their churches to join them in this fight. Some came together even for fellowship or a combination of these and other reasons. Those caucuses which adopted longterm goals are still very much at work.

Ecumenically, the best known organization of Black Christians is still the National Conference of Black Churchmen. Undoubtedly, the struggle for liberation, erstwhile referred to as "civil rights," is the single most important activity which holds it together. In the Consultation for Church Union, the building of a just, non-racialist society is very much a part of discussion about union. The Governing Board of the National Council of Churches hasn't let up issuing statements of concern about civil rights, but we all know there has been a radical reduction in funding for programs. This is also a trend that exists in denominations. Still, we are probably seeing more work than can reasonably be expected, given the financial picture. Many of us are distressed by the fact that in the past five or so years we have seen the near dissolution of "Race" portfolios. This doesn't fly well in the face of news accounts about the resurgence of neo-Nazism and the Ku Klux Klan.

Civil rights for racial minorities and all other people in this country has a precise and limited meaning. This limitation is related directly to laws and, philosophically, to the peculiar premises upon which the western legal tradition is based. In the World Council of Churches' Programme to Combat Racism, I am associated with a great number of people who are either unfamiliar with this legal tradition or are consciously at odds with it. Most people in that context speak about economic rights. Americans speak about equal opportunity, not equal distribution. Americans, Black people included, see freedom in the context of realizing the "American Dream," without realizing, at the same time, that by fulfilling it we aid and abet imperialism and the oppression of other societies.

Take South Africa as an example. The materials for producing catalytic converters, which are required to curtail air pollution from automobiles, are imported exclusively from South Africa, enhancing that nation's economy. But I doubt whether Black Americans, any more than other Americans, would be willing to give up the idea of buying a new car for this reason. This orientation justified the tendency of some oppressed people in other countries to regard Black Americans merely as Americans.

In spite of this obstacle to understanding though, I am convinced that on both sides, oppressed Black people here and oppressed people from other places are beginning to discover concrete bases for international solidarity. This is one of the most invigorating developments for me in the world ecumenical movement, because those of us who have had a limited vision of the Gospel's promise of liberation have had the film peeled from our eyes, while those who have tended to see the U.S. as a monolithic blob have also learned better.

More and more, international arenas of the churches will be the forum for discussing and working toward alleviating the structures all over the world that oppress people. So far, this discussion has not taken on any great momentum in the American churches but it will come soon.

Yet, while some of us will move more resolutely to that one world, in justice, which Christ demands, there will still be manifestations of American Christianity advocating personal piety and aloofness from any semblance of social witness. As I look at the increasing appeal of television personalities who promote this narrow view of the Gospel, I am convinced that at least one very large segment of the church in the U.S. should not be expected to have civil rights on its agenda for many years to come—certainly not the civil rights of minorities.

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4. Loc. cit.
5. Bell op. cit. p. 43.
6. *Scott v. Sanford*, op. cit. p. 548
7. Green, Dwight L. "Political Liberalism, Standardized Ability Testing and Equal Protection Adjudication: The Inadequacies of the Manifest or Substantial Relations Standard of Review", Black Law Journel, Spring '74, p. 199
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9. *Hall v. Decuir*
10. *Civil Rights Cases*
11. *Brown v. Bd. of Education*, 347 U.S. 483 (1954), 349 U.S. 294
12. Ibid, p. 488
13. Ibid, p. 490
14. Ibid, p. 491
15. Ibid, p. 501
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17. Jones, Faustine Childress, *The Changing Mood in America, Eroding Commitment?* Howard University Press, 1977, p. 55
18. Green, op. cit. p. 203
19. Ibid, p. 204
20. Civil Rights Acts of 1964: Title VI, 78 Stat. 252, 42, U.S.C. 2000d et seq, Title VII, 78 Stat. 253, 42, U.S.C. 2000e et. seq.
21. *Ablemarle Paper Co. v. Moody*, 422 U.S. 405, 425 *Heart of Atlanta Motel v. U.S.*, 379, U.S. 241
22. Jones, op. cit. p. 191

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